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A NEW PROVINCE FOR LAW AND ORDER

INDUSTRIAL PEACE THROUGH MINIMUM WAGE AND ARBITRATION

THE new province is that of the relations between employers and employees. Is it possible for a civilized community so to regulate these relations as to make the bounds of the industrial chaos narrower, to add new territory to the domain of order and law? The war between the profit-maker and the wage-earner is always with us; and, although not so dramatic or catastrophic as the present war in Europe, it probably produces in the long run as much loss and suffering, not only to the actual combatants, but also to the public. Is there no remedy?

During a brief sojourn in the United States in the summer of 1914, I had the good fortune to meet many men and women of broad and generous outlook and of admirable public spirit. They were anxious to learn what I, as President of the Australian Court of Conciliation and Arbitration, could tell them of Australian methods of dealing with labour questions. I propose now, on the invitation of the editor of this Review, to state briefly the present position, confining my survey to my own personal experience.

The Australian Federal Constitution of 1900 gave to the Federal Parliament power to make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State."¹ Following the example of the United States Constitution, the Constitution left all residuary powers of legislation to the States; and the theory generally held at the time of our constitutional convention was that each State should be left to deal with its own labour conditions as it thought best. But an exception was made, after several discussions, in favour of labour disputes which pass beyond State boundaries and cannot be effectually dealt with by the laws of any one or more States. Just as bushfires run through the artificial State lines, just as the rabbits ignore them in pursuit of food, so do, frequently, industrial disputes.

In pursuance of this power, an Act was passed December 15, 1904, constituting a Court for Conciliation, and where con-

¹ Sec. 51 (XXXV).

ciliation is found impracticable, arbitration. The arbitration is compulsory in the sense that an award, if made, binds the parties. The Act makes a strike or a lockout an offence if the dispute is within the ambit of the Act — if the dispute is one that extends beyond the limits of one State. In other words, the process of conciliation, with arbitration in the background, is substituted for the rude and barbarous processes of strike and lockout. Reason is to displace force; the might of the State is to enforce peace between industrial combatants as well as between other combatants; and all in the interest of the public.

Under the Act, the Court consists of a President, who must be one of the justices of the High Court of Australia. The High Court is modelled on the Supreme Court of the United States, having often to decide whether Acts are constitutional, but it is also a Court of Appeal from the Supreme Courts of the States. The first President of the Court of Conciliation was appointed February 10, 1905, and, on his resignation in September, 1907, I was appointed as his successor.

The first task that I had to face was not, strictly speaking, conciliation or arbitration. The Federal Parliament imposed certain excise duties on agricultural implements manufactured, but it provided for the remission of the duties in the case of goods manufactured under conditions, as to the remuneration of labour, which the President of the Court should certify to be "fair and reasonable."² The Act gave no guidance as to the model or criterion by which fairness and reasonableness were to be determined. In dealing with the first employer who applied to me for a certificate, I came to the conclusion that the Act was designed for the benefit of employees, and that it was meant to secure for them something which they could not get by individual bargaining with their employers. If A let B have the use of his horse on the terms that B give the horse fair and reasonable treatment, B would have to give the horse proper food and water, shelter and rest. I decided therefore to adopt a standard based on "the normal needs of the average employee, regarded as a human being living in a civilized community." This was to be the primary test in ascertaining the minimum wage that would be treated as "fair and reasonable" in

² Excise Tariff 1906.

the case of unskilled labourers. At my suggestion, many household budgets were stated in evidence, principally by housekeeping women of the labouring class; and, after selecting such of the budgets as were suitable for working out an average, I found that in Melbourne, the city concerned, the average necessary expenditure in 1907 on rent, food and fuel, in a labourer's household of about five persons, was £1.12s.5d. (about \$7.80, taking a dollar as equivalent to 4s. 2d.); but that, as these figures did not cover light, clothes, boots, furniture, utensils, rates, life insurance, savings, accident or benefit societies, loss of employment, union pay, books and newspapers, tram or train fares, sewing machine, mangle, school requisites, amusements and holidays, liquors, tobacco, sickness or death, religion or charity, I could not certify that any wages less than 42s. per week for an unskilled labourer would be fair and reasonable. Then, in finding the wages which should be treated as fair and reasonable in the cases of the skilled employees, I relied mainly on the existing ratios found in the practice of employers. If, for instance, the sheet-iron worker got 8s. per day when the labourer got 6s., the sheet-iron worker should get, at the least, 9s. when the labourer's minimum was raised to 7s.

In the case referred to, the employer did not raise before me the point that the Act was invalid; but, having failed in his application for a certificate, he refused to pay the excise duty, and defended an action to recover the duty before the High Court on the ground that the Act was invalid; and he succeeded, by a majority of three justices to two, on the ground that the Act was not really a taxation Act at all, but an Act to regulate labour conditions, and as such beyond the competence of the Federal Parliament.³ But the principles adopted in the case for ascertaining a "fair and reasonable" minimum wage have survived and are substantially accepted, I believe universally, in the industrial life of Australia.

In the first true arbitration case — that relating to ship's cooks, bakers, etc. — the standard of 7s. per day was attacked by employers, but I do not think that it has been attacked since, probably because the cost of living has been rising. The Court announced that it would ascertain first the necessary living wage for the unskilled labourer, and then the secondary wage due to skill

³ King v. Barger, Commonwealth v. McKay, 6 Com. Law Rep. 41 (1908).

or other exceptional qualifications necessary. Treating marriage as the usual fate of adult men, a wage which does not allow of the matrimonial condition and the maintenance of about five persons in a home, would not be treated as a living wage. As for the secondary wage, it seemed to be the safest course, for an arbitrator not initiated into the mysteries of the several crafts, to follow the distinctions in grade between employees as expressed in wages for many years.

The distinction between the basic or primary or living wage and the secondary wage attributable to exceptional qualifications necessary for the performance of the function is not fanciful; it was forced on the Court by the problems presented and by the facts of industrial life. Yet it has to be borne in mind that though the essential natural needs come first, the conventional needs (*e. g.*, of artisans as distinguished from labourers) become, by usage, almost equally imperative.⁴

The following propositions may, I think, be taken to be established in the settlement of minimum wages by the Court; and it is surprising to find how often, as the principles of the Court's action come to be understood and appreciated, they guide parties disputing to friendly collective agreements, without any award made by the Court.

1. One cannot conceive of industrial peace unless the employee has secured to him wages sufficient for the essentials of human existence.⁵

2. This, the basic wage, must secure to the employee enough wherewith to renew his strength and to maintain his home from day to day.⁶

3. The basic wage is the same for the employee with no family as for the employee with a large family. It rests on Walt Whitman's "divine average," and the employer need not concern himself with his employee's domestic affairs.

4. The secondary wage is remuneration for any exceptional gifts or qualifications,⁷ not of the individual employee, but gifts or quali-

⁴ Engine-drivers, 7 Com. Arb. 132, 139 (1913).

⁵ Boot-factories, 4 Com. Arb. 1, 10 (1910); Seamen, 5 Com. Arb. 147, 164 (1911).

⁶ Broken Hill Mine, 3 Com. Arb. 1, 20 (1909).

⁷ Boot-factories, 4 Com. Arb. 1, 10 (1910); Postal Electricians, 7 Com. Arb. 5, 10 (1913); Builders' Labourers, 7 Com. Arb. 210, 217 (1913).

fications necessary for the performance of the functions, *e. g.*, skill as a tradesman, exceptional heart and physique, as in the case of a gas stoker,⁸ exceptional muscular training and power, as in the case of a shearer,⁹ exceptional responsibility, *e. g.*, for human life, as in the case of winding or locomotive engine-drivers.¹⁰

5. The secondary wage, as far as possible, preserves the old margin between the unskilled labourer and the employee of the skilled or exceptional class.¹¹

6. After ascertaining the proper wages, basic and secondary, the Court considers any evidence adduced to show that the employers ought not to be asked to pay such wages.¹² It will consider grounds of finance, of competition with imports, of unfairness to other workers, of undue increase in prices of the product, of injury to the public, etc.

7. The wages cannot be allowed to depend on the profits made by the individual employer, but the profits of which the *industry* is capable may be taken into account. If the industry is novel, and those who undertake it have to proceed economically, there may be a good cause for keeping down wages, but not below the basic wage, which must be sacrosanct. Above the basic wage, bargaining of the skilled employee may, with caution, be allowed to operate.¹³

8. The fact that a mine is becoming exhausted or poorer in its ores is not a ground for prescribing a lower rate than would otherwise be proper. If shareholders are willing to stake their own money on a speculation, they should not stake part of the employee's proper wages also. The Court cannot endanger industrial peace in order to keep unprofitable mines going.¹⁴

9. The Court does not increase the minimum on the ground of affluence of the employer. It is not affected by the fact that one of the employers can, by skilful management, by enterprise, or by good fortune, make very large profits.¹⁵

⁸ Gas Employees, 7 Com. Arb. 58, 71 (1913).

⁹ Shearers, 5 Com. Arb. 48, 79 (1911).

¹⁰ Engine-drivers, 5 Com. Arb. 9, 21 (1911).

¹¹ McKay, 2 Com. Arb. 1, 16 (1907); Ship's Cooks, 2 Com. Arb. 55, 65, 66 (1908).

¹² Broken Hill Mine, 3 Com. Arb. 1, 31 (1909).

¹³ *Ibid.*, 32; Shearers, 5 Com. Arb. 48, 73 (1911); Ship's Officers, 6 Com. Arb. 6, 21 (1912).

¹⁴ Broken Hill Mine, *supra*, 33-34; Engine-drivers, 7 Com. Arb. 132, 139 (1913).

¹⁵ Seamen, 5 Com. Arb. 147, 164 (1911); Gas Employees, 7 Com. Arb. 58, 72 (1913).

10. The minimum rate must be based on the highest function that the employee may be called on to exercise. The employer must not give a plumber labourer's work and pay him labourer's wages if he has also to do plumbing.¹⁶

11. In finding the proper minimum rate, the Court tries to find what would be proper for an employee of average capacity called upon to do work of the class required. If the employer desires to secure the services of an exceptional workman, he is free to do so. The payment of higher rates is left to the play of bargaining.¹⁷

12. The Court does not attempt to discriminate in wages on the ground of comparative laboriousness. Discrimination on such a ground is neither safe nor sound. The Court declined to give an extra rate to hodmen if they carry beyond a certain height.¹⁸

13. The Court will not discriminate in wages as between the several States so as to interfere with the freedom of trade between the States provided by the Constitution.¹⁹

14. The Court will not keep down wages on steamers so as to enable them to beat State railways in competition or to help one competitor against another.²⁰

15. The Court accepts and follows the usual practice of making rates for casual employment higher than the corresponding rates for continuous employment.²¹

16. The Court, in obedience to the Act, provides exceptions to the minimum rate in the case of aged, slow or infirm workers, but the exceptional cases must be disclosed to the representative of the Union, and be well safeguarded.²²

17. But the Court will not provide exceptions to the minimum rate for "improvers," men paid more than boys and less than journeymen, men who are used to beat down the claims of competent journeymen, and are thus a perpetual menace to the peace of the community.²³

¹⁶ Postal Electricians, 7 Com. Arb. 5, 8-9 (1913).

¹⁷ Ship's Stewards, 4 Com. Arb. 61, 63, 68 (1910); Engine-drivers, 5 Com. Arb. 9, 15 (1911); Shearers, 5 Com. Arb. 48, 91 (1911); Builders' Labourers, 7 Com. Arb. 210, 223 (1913).

¹⁸ *Ibid.*, 231.

¹⁹ CONSTITUTION, Sec. 92; Boot-factories, 4 Com. Arb. 1, 13 (1910).

²⁰ Ship's Officers, 6 Com. Arb. 6, 22 (1912).

²¹ Builders' Labourers, 7 Com. Arb. 210, 218 (1913).

²² ACT, Sec. 40; Boot-factories, 4 Com. Arb. 1, 24 (1910).

²³ *Ibid.*, 16.

18. The Court regards the old system of apprenticeship as unsuitable for factories under modern conditions, and it objects to fixing a rigid proportion of apprentices to journeymen without regard to the circumstances, *e. g.*, the character of the output of each factory. But if conditions of apprenticeship are in dispute, the Court will, especially if both sides wish it, and for the sake of peace as well as efficiency, make regulations on the subject. The proper method, however, seems to be, in boot-factories, to co-ordinate the work of the factories with the work of the technical schools.²⁴

19. The Court will not prescribe extra wages to compensate for unnecessary risks to the life or health of the employee or unnecessary dirt. No employer is entitled to purchase by wages the right to endanger life or to treat men as pigs.²⁵

20. The Court gives weight to existing conventions, usages, prejudices, exceptional obligations and expenses of the employees; for instance, that masters and officers are required to keep up a certain appearance, and that stewards must provide themselves with uniform and laundry.²⁶

21. Where it is established that there is a marked difference in the cost of living between one locality and another, the difference will, so far as possible, be reflected in the minimum wage.²⁷

22. But where, as in the case of the wharf labourers at ports, all the employees and nearly all the employers desired that there should be no differentiation, the Court bases the minimum wage on the mean Australian cost of living.²⁸

23. In cases such as that of ship's stewards, where the employees usually receive from passengers "tips" (*or "bunce"*), the average amount of the tips must be taken into account in finding whether the employee receives a living wage. But the minimum wage will

²⁴ Boot-factories, 4 Com. Arb. 1, 19, 20 (1910).

²⁵ Ship's Cooks, 2 Com. Arb. 55, 59, 60 (1908); Seamen, 5 Com. Arb. 147, 164 (1911).

²⁶ Ship's Officers, 4 Com. Arb. 89, 93, 95 (1910); Ship's Stewards, 4 Com. Arb. 61, 66 (1910).

²⁷ Broken Hill Mine, 3 Com. Arb. 1, 28–30 (1909); Engine-drivers, 5 Com. Arb. 9, 23 (1911); 7 Com. Arb. 132, 141 (1913); Fruit-growers, 6 Com. Arb. 61, 69 (1912); Gas Employees, 7 Com. Arb. 58, 70–74 (1913); Builders' Labourers, 7 Com. Arb. 210, 221 (1913).

²⁸ Wharf Labourers, 8 Com. Arb. (1914).

be raised to its proper level if the practice of tipping can be stopped.²⁹

24. In cases where employees are "kept," found in food and shelter by the employer, the value of the "keep" is allowed in reduction of the wages awarded. At a time when the keep of single men, such as labourers, cost in lodgings usually 15s. per week, the Court reduced the wages by 10s. only. For the 15s. at the family home would go further than it would go for board and lodging outside the home; and the employer who feeds a large number of men can buy the necessary commodities in large quantities and on advantageous terms. The 10s. per week seemed to represent fairly the amount of expenditure of which the home was relieved by the absence of the man.³⁰

25. The principle of the living wage has been applied to women, but with a difference, as women are not usually legally responsible for the maintenance of a family. A woman's minimum is based on the average cost of her own living to one who supports herself by her own exertions. A woman or girl with a comfortable home cannot be left to underbid in wages other women or girls who are less fortunate.³¹

26. But in an occupation in which men as well as women are employed, the minimum is based on a man's cost of living. If the occupation is that of a blacksmith, the minimum is a man's minimum; if the occupation is that of a milliner, the minimum is a woman's minimum; if the occupation is that of fruit-picking, as both men and women are employed, the minimum must be a man's minimum.³²

27. As regards hours of work, when disputed, the Court usually adheres to the general Australian standard of 48 hours; generally 8½ hours on five days, 4¼ hours on Saturday. But in exceptional cases the Court has reduced the hours; in one case because of the nerve-racking character of the occupation;³³ in another case, that of builders' labourers, because the men

²⁹ Ship's Stewards, 4 Com. Arb. 61, 64 (1910).

³⁰ Ship's Cooks, 2 Com. Arb. 55, 62 (1908); Ship's Stewards, 4 Com. Arb. 61, 63 (1910).

³¹ Fruit-growers, 6 Com. Arb. 61, 71 (1912).

³² *Ibid.*, 72.

³³ Postal Electricians, 7 Com. Arb. 5, 15–16 (1913).

have to "follow their job," spending much of their own time in travelling.³⁴

28. The Court has conceded the eight hours' day, at sea as well as in port, to deckhands on ships;³⁵ to officers on ships,³⁶ to marine engineers.³⁷ But there are sundry necessary exceptions, and the Master retains the absolute right to call on any man in emergencies involving the safety of the ship; and for other purposes he may call on any man, paying extra rates for the overtime. The hours of navigating officers were sometimes shocking, and involved danger to ship, cargo and passengers.³⁸

29. In certain exceptional cases the Court has granted a right to leave of absence for two or three weeks on full pay to employees after a certain length of continuous service; not, of course, to casual or temporary employees.³⁹

30. The Court refuses to dictate to employers what work they should carry on, or how; or what functionaries they should employ, or what functions for each employee; or what tests should be applied to candidates for employment.⁴⁰

31. The Court leaves every employer free to carry on the business on his own system, so long as he does not perpetuate industrial trouble or endanger industrial peace; free to choose his employees on their merits and according to his exigencies; free to make use of new machines, of improved methods, of financial advantages, of advantages of locality, of superior knowledge; free to put the utmost pressure on anything and everything except human life.⁴¹

32. As regards complaints of disagreeable or onerous conditions, the Court treats as fundamental the consideration that the work of the ship, factory, mine, etc., must be done, a consideration next in order to that of the essential needs of human life. An order will

³⁴ Builders' Labourers, 7 Com. Arb. 210, 228-9 (1913).

³⁵ Seamen, 5 Com. Arb. 147, 159, 160 (1911).

³⁶ Ship's Officers, 4 Com. Arb. 89, 99 (1910).

³⁷ Marine Engineers, 6 Com. Arb. 95, 107 (1912).

³⁸ Ship's Officers, 6 Com. Arb. 6, 16, 17 (1912).

³⁹ *Ibid.*, 15, 25; 7 Com. Arb. 92, 104 (1913); Postal Electricians, 7 Com. Arb. 5, 17 (1913).

⁴⁰ Broken Hill Mine, 3 Com. Arb. 1, 36 (1909); Postal Electricians, 7 Com. Arb. 5, 7, 8, 13, 18, 19 (1913).

⁴¹ Boot-factories, 4 Com. Arb. 1, 18 (1910); Shearers, 5 Com. Arb. 48, 100 (1911); Fruit-growers, 6 Com. Arb. 61, 75 (1912); Gas Employees, 7 Com. Arb. 58, 77 (1913).

not be made that is inconsistent with the effective management of the undertaking.⁴²

33. On the same principle the Court steadily refuses to make orders which would militate against the public interest or convenience. It has refused to order prohibitive overtime rates for leaving port on Sundays;⁴³ it has refused to forbid the employment of casuals or to forbid "broken time" in tramway services. Casuals or "broken time," or both, are necessary to meet the extra traffic at certain times of the day.⁴⁴

These are some of the principles of action adopted by the Court. But, it may be asked, what about piecework? How does the Court fix piecework rates? The first great case in which piecework rates were directly involved was that of the Shearers.⁴⁵ At the time of the arbitration, wool furnished nearly forty per cent of the exports of Australia, nearly £29,000,000 per annum, in addition to the wool used in Australia. In that case the Court prescribed the piecework rates on a timework basis — found the piecework rates which would enable an average shearer to earn such wages per week as would be the just minimum for a man with the qualifications of a shearer if he were paid by time. Having found that the shearer should, as a "skilled" worker, get a net wage of £3 per week for the time of his expedition to the sheep stations to shear, and having found that a rate of 24s. per 100 sheep would give this net result, the Court fixed 24s. per 100 as the minimum rate.⁴⁶ In finding the net returns of the whole expedition, allowances had to be made for days of travelling and waiting, expenses en route, cost of mess and combs and cutters.⁴⁷ This system of finding the net result of the *expedition*, and what would be a fair return for the expedition, was also adopted in the case of persons employed by fruit-growers on the River Murray.⁴⁸ Sometimes the Court protects pieceworkers in making their bargain by prescribing that their remuneration shall not fall below, in result, a certain timework minimum.⁴⁹

⁴² Ship's Stewards, 4 Com. Arb. 61, 73 (1910); Ship's Officers, 4 Com. Arb. 89, 101 (1910).

⁴³ Seamen, 5 Com. Arb. 147, 160 (1911).

⁴⁴ Tramways, 6 Com. Arb. 130, 144 (1912).

⁴⁵ 5 Com. Arb. 48 (1911).

⁴⁶ *Ibid.*, 73, 79.

⁴⁸ Fruit-growers, 6 Com. Arb. 61, 68 (1912).

⁴⁷ *Ibid.*, 74, 76.

⁴⁹ *Ibid.*, 75.

The system of arbitration adopted by the Act is based on unionism. Indeed, without unions, it is hard to conceive how arbitration could be worked. It is true that there are methods provided by which the Court can intervene for the preservation of industrial peace even when its powers are not invoked by any union; but no party can file a plaint for the settlement of a dispute except an "organization," that is to say, a union of employers or of employees registered under the Act.⁵⁰ One of the "chief objects" of the Act, as stated in Sec. 2, is "to facilitate and encourage the organization of representative bodies of employers and of employees and the submission of industrial disputes to the Court by organizations"; and it follows that the Court will not assist an employer in devices to stamp out unionism.⁵¹ It is, of course, better for an employer that he should not be worried by complaints of individual employees and that any complaints should be presented collectively by some responsible union. He has then the advantage of being able to deal with his employees on a consistent scheme, equitable all round the service, and his time is not taken up by petty complaints or individual fads. A demand made on him comes from a responsible executive, with the consent, direct or indirect, of the organized body of members of the union. Moreover, from the point of view of the employees, it is better that an individual employee should not, by complaining, incur the risk of becoming a marked man or of being removed, and the individual employee is generally powerless. From the point of view of the Court and of the public, it is fair to state that in nearly every case—I can only remember one case to the contrary—the influence of Union leaders has always been in the direction of peace. It would not be so, probably, if there were no means of obtaining an improvement of conditions except by strike, actual or threatened, but in Australia, the leaders can hold out to the members of the union a prospect of relief, without strike, from the Court or from some wages board.⁵² It is significant that in the one exceptional case referred to, the leaders of the Union have been converted so that they are now strong advocates of arbitration.

But then comes the difficult question of "preference to unionists."

⁵⁰ Sec. 19.

⁵¹ Tramways, 6 Com. Arb. 130, 143 (1912).

⁵² Marine Engineers, 6 Com. Arb. 95, 100 (1912).

Preference to unionists is the Australian analogue of the "preferential union shop" made familiar in some of the garment industries of the United States. The Act gives the Court power to direct that as between members of organizations (unions) of employees and other persons desiring employment at the same time preference shall be given to such members, other things being equal.⁵³ But it is only a power, not a duty, to order such preference; and the Court is very loth to exercise the power. "The absolute power of choice (between applicants for employment) is one of the recommendations of the minimum wage system, from the employer's point of view — he can select the best men available when he has to pay a certain rate."⁵⁴ For this reason preference was refused in the case of shearers, etc.;⁵⁵ in the case of seamen;⁵⁶ in the case of builders' labourers.⁵⁷ Yet the Court recognizes the difficulty of the position. As was said in the builders' labourers case: —

"The truth is, preference is sought for unionists in order to prevent preference of non-unionists or anti-unionists — to prevent the gradual bleeding of unionism by the feeding of non-unionism. It is a weapon of defence. For instance, some employers here hired men through the Independent Workers' Federation — a body supported chiefly by employers' money, and devised to frustrate the ordinary unions; and those who applied for work at the office of this body would not be introduced to the employer unless they ceased to be members of the ordinary unions and became members of this body. What is to be done to protect men in the exercise of their right as free men to combine for their mutual benefit, seeing that the employing class has the tremendous power of giving or withholding work? The only remedy that the Act provides is an order for preference; and it is doubtful whether such an order is appropriate or effective. It is, indeed, very trying for men who pay full dues to a legitimate union to work side by side with men who do not — with men who look to their own interests only, seeking to curry favour with the employers, getting the benefit of any general rise in wages or betterment of conditions which is secured without their aid and in the teeth of their opposition, men who are preferred (other things being equal) for vacancies and promotion. Every fair man recognizes the

⁵³ Sec. 40.

⁵⁴ Engine-drivers, 5 Com. Arb. 9, 25 (1911); 7 Com. Arb. 132, 147 (1913); Tramways, 6 Com. Arb. 35, 47 (1912).

⁵⁵ 5 Com. Arb. 48, 99 (1911).

⁵⁶ 5 Com. Arb. 147, 170 (1911).

⁵⁷ 7 Com. Arb. 210, 233 (1913).

difficulty of the position — every man who is not too much of a partisan to look sometimes at the other side of the hedge. In another case recently before me, a non-unionist told me that he acted solely on the basis of his personal interest, without any regard for the interests of his fellow workers. He looked for favours to himself, because he kept away from those who combined for the common good of the whole body. It is not out of consideration for such men that I refuse preference; it is rather out of consideration for such employers as honestly take the best man available, unionist or not. I do not want them to be harassed with the doubt, when selecting men for a post, whether they can prove their appointee to be better than all the unionist applicants. I refuse preference also out of consideration for many who have not joined any union simply because they have not felt the need. In the case of country building work, for instance, it is common for men on farms, &c., when farm work is not pressing, to take a job as builders' labourer. Why should the employer be compelled to bring union labourers from the city? After all, the direct way for unionists to counteract unfair preference of non-unionists is for the unionists to excel — to give to the employer the best service. It is nearly always found that employers prefer a first class man who is unionist to a second class man who is non-unionist.”⁵⁸

The only case in which the Court has ordered preference is the case of a tramway company which deliberately discriminated against unionists and refused to undertake not to discriminate in future.⁵⁹ It is to be observed that the Court is not given power by the Act to order that the employer shall not discriminate against unionists in giving or withholding employment.

The imposition of a minimum wage, a wage below which an employer must not go in employing a worker of a given character implies, of course, an admission of the truth of the doctrine of modern economists, of all schools I think, that freedom of contract is a misnomer as applied to the contract between an employer and an ordinary individual employee. The strategic position of the employer in a contest as to wages is much stronger than that of the individual employee. “The power of the employer to withhold bread is a much more effective weapon than the power of the employee to refuse to labour.”⁶⁰ Low wages are bad in the worker's eyes, but unemployment, with starvation in the background, is

⁵⁸ 7 Com. Arb. 210, 233–4 (1913).

⁵⁹ Tramways, 6 Com. Arb. 130, 162 (1912).

⁶⁰ Engine-drivers, 5 Com. Arb. 9, 27 (1911).

worse. The position was put luminously once, as well as with unconscious humor, by an employer on whom a plaint was served for settlement of a dispute by the Court. In place of filing an answer, he wrote a letter to the registrar, denying that he was a party to any dispute. "I have never," said he, "quarrelled or disputed with a labourer of any kind. . . . *If we cannot agree, well, we will part; that ends the whole.* . . . Love is the power which will end all struggles, not legislation." Other respondents pin their faith, not to "love," but to the sterner "law of supply and demand." They treat this law as being, in the matter of wages, more inexorable and inevitable than even the law of gravitation, as not being subject, as laws of nature are, to counteraction, to control, to direction. "One may dam up a river, or even change its course; but one cannot (it is said) raise wages above the level of its unregulated price, above the level of a sum which a man will accept rather than be starved."⁶¹ If the Court did nothing else than drag such theories into the light of day, and into free discussion, it would be doing good service to the community. But it is coming to be recognized that what the Court does in fixing a minimum wage is by no means novel in principle. There are many Acts of many legislatures which prescribe minimum conditions on other subjects. For example, Mining Acts often prescribe minimum conditions as to ventilation, timbering, safety appliances, machinery, sanitation. These matters are not left to individual bargaining.

There are no definite figures with regard to the cost to the parties of arbitration proceedings, but the cost is very slight. There are seldom any costs incurred in employing lawyers, for, under Sec. 27 of the Act, lawyers cannot be employed except with the consent of both parties, and the employees generally refuse their consent. The secretary of the organization generally puts its case, and the employers or some permanent officer generally puts the employers' case. The principal expense of an arbitration is that of bringing witnesses. If prohibition proceedings are taken in the High Court to prevent the enforcement of an award on the ground that the Court of Conciliation has exceeded its jurisdiction (of which I shall say more presently), no doubt heavy, very heavy, expenses are incurred, but these are not expenses of the arbitration.

⁶¹ Engine-drivers, 5 Com. Arb. 27, 28 (1911); Ship's Officers, 6 Com. Arb. 6, 18 (1912); Marine Engineers, 6 Com. Arb. 95, 101 (1912).

But it has to be admitted that proceedings in the Court of Conciliation often take a very long time, sometimes weeks, in a few cases, months. The proceedings cannot be otherwise than lengthy, as the disputes of which the Court can take cognizance are so widespread,—must extend from one State into one or more other States. Moreover, the habit is to bring before the employers, and afterwards before the Court, a very long list of conditions in dispute, and the case of each employer has to be fairly considered by the Court in connection with each grievance. The number of employers respondents to a plaint is generally great. There were 311 employers in the Engine-drivers' case;⁶² 570 in the case of the Builders' Labourers;⁶³ 650 in that of the Fruit-growers;⁶⁴ and 2549 at least in that of the Shearers.⁶⁵ The Court has no power to make an award a common rule of the industry; it cannot investigate and settle the proper conditions to be applied in one typical undertaking and then extend the same conditions to other undertakings of the same character. The Act purported to give this power to the Court, but it was held by the High Court, on a case stated, that the Act was in this respect unconstitutional and invalid.⁶⁶ This want of power to make a common rule for the industry not only lengthens the proceedings, but it also may operate to the prejudice of the employers who are bound by the award. For the Court can deal only with employers who employ members of the Union. Some rival employers may have no members of the Union in their employment and therefore have to be excluded from the award. Their hands are free as to wages, while the hands of the others are fettered, and this is, of course, unfair as between competitors in the trade. In one case, that of the boot-factories,⁶⁷ the difficulty was met by the employers and employees concurring in an application before the wages boards of each of the States concerned to have the terms of the award made a common rule for the State. But this remedy is not always available.

There is a provision in the Act⁶⁸ enabling the Court to appoint a board of reference, assigning to it the function of determining

⁶² 7 Com. Arb. 132 (1913).

⁶³ 7 Com. Arb. 210 (1913).

⁶⁴ 6 Com. Arb. 61, 65 (1912).

⁶⁵ 5 Com. Arb. 48, 65 (1911).

⁶⁶ Boot-factories, 11 Com. Law Rep. 311 (1910).

⁶⁷ 4 Com. Arb. 1 (1910); Builders' Labourers, 7 Com. Arb. 210, 235 (1913).

⁶⁸ Sec. 40 a.

specified matters which under the award may require to be determined. Such a provision, if properly drafted and valid, would be of eminent service to peace. Difficulties often arise under an award, owing to the vast variety of methods in the different undertakings, as to the application of the words of the award to some particular case. These and other difficulties ought to be met by collective adjustment, between representatives of the employers on the one side, and the representatives of the Union on the other, with a neutral chairman; but from the nature of the case there would have to be a separate board in each of the centres of the industry. Nothing would tend more to prevent serious friction and to promote mutual understanding of employers and employees. "A suitable Board of Reference, under the aegis of a strong union, is a safety-valve for any industry."⁶⁹ But, unfortunately, as the section stands, with the interpretation put upon it by the High Court, it is practically useless. The parties on both sides of a dispute often seek a board, or rather boards, of reference,⁷⁰ but the Court cannot generally help them. Sometimes, however, the parties to the dispute make and file agreements between the union and the several employers for a board and leave the Court to award on the other subjects in dispute; and the agreements are certified by the Court, and on being filed under Sec. 24 have the same binding effect as an award.⁷¹

There are two important powers of which the Court has frequently availed itself, or threatened to avail itself, with very excellent effect.⁷² These are: (a) the power to withhold an award if it appear "that further proceedings by the Court are not desirable in the public interest";⁷³ and (b) the power to vary an award.⁷⁴ Sometimes, the employees, though seeking an award, have taken up an obstinate attitude, intimating in effect that if the award does not meet their wishes they will not abide by it; and the Court has plainly intimated that it will not proceed with the arbitration on such terms.⁷⁵ It cannot be for the public interest

⁶⁹ Engine-drivers, 7 Com. Arb. 132, 144 (1913).

⁷⁰ Seamen, 6 Com. Arb. 59 (1912).

⁷¹ Engine-drivers, 7 Com. Arb. 132, 135 (1913).

⁷² Fruit-growers, 6 Com. Arb. 61, 78 (1912).

⁷³ Sec. 38 *h.*

⁷⁴ Sec. 38 *o.*

⁷⁵ Gas Employees, 7 Com. Arb. 58, 62 (1913); Broken Hill Mine, 3 Com. Arb. 1, 20 (1909).

to proceed with the arbitration under such a constraint. Arbitration by the Court is meant to be a substitute for the method of strike, and "you cannot have award and strike too."⁷⁶ In one case, while the Court was preparing an award for seamen and firemen, information came that the firemen of the S. S. "Koombana" refused to work on the ship unless a certain chief steward were removed. The position was serious; the ship carried the mails, as well as passengers and cargo, for ports on the West Australian coast. There was an agreement in existence under which it was a breach of agreement on the part of the Union if by reason of any dispute a vessel were detained twenty-four hours. The Court intimated that it would not make its award so long as the agreement was not observed. As a result, officials of the Union conducted suitable firemen to the port where the vessel lay, put them on board, and the "Koombana" went on its way; then, and not till then, the Court gave its award.⁷⁷

The power to vary an award has also been held over the head of a recalcitrant Union. It is not fair to keep the employers bound by the award if the Union takes the benefit of the award and rejects the burden. The Court has power to lower or annul the minimum wage in such a case if necessary.⁷⁸ Fortunately it never has been necessary. I may give one case in point. The wharf labourers were on strike in Brisbane; seamen who were enjoying the benefit of an award were ordered to unload their vessel. They were naturally indisposed to comply, but, before refusing, they telegraphed to the Executive of their Union for directions. They were told by the Executive to unload or they would lose the award. They unloaded.

Another very valuable power is that conferred by Parliament in 1910, under which the President may, when a dispute exists or is threatened, summon any person to attend a conference in his presence. The attendance is compulsory, enforceable by penalty.⁷⁹ Frequently a quiet talk at such a conference has prevented a strike which was imminent.⁸⁰ Frequently the parties arrange to proceed

⁷⁶ Liquor Trade, 7 Com. Arb. 255 (1913).

⁷⁷ Seamen, 5 Com. Arb. 147, 173-4 (1911).

⁷⁸ Fruit-growers, 6 Com. Arb. 61, 78 (1912).

⁷⁹ Sec. 16 a.

⁸⁰ Seamen, 4 Com. Arb. 108 (1910); 5 Com. Arb. 147, 154 (1911); Fruit-growers, 5 Com. Arb. 37, 183 (1911); 6 Com. Arb. 61, 62 (1912); Steamboat Engine-men, 6 Com. Arb. 60 (1912); Bakers, 7 Com. Arb. 257-8 (1913).

for arbitration and make temporary arrangements for carrying on work until the award.⁸¹ Sometimes an actual strike confined to one State though the dispute extended to two States, has been stopped, the men going back to work at the old rates until the award.⁸² A further amendment was made in the Act in 1911, under which, if no agreement has been reached at the conference, the President can refer the dispute into the Court for arbitration.⁸³ The fact that this whip is in the hands of the President, to be used in the last resort, and that the party with the stronger position for the time being will have to submit to an award if he takes up an obstinate attitude against all agreement, is found to operate as a strong inducement to compromise and to reasonable arrangements by consent. Agreements in lieu of award have often been fixed up in a conference or as the result of a conference.⁸⁴ The agreements are generally produced in Court when the case is called on, and the President certifies to them, and has them filed, and they operate, are enforceable, as an award.⁸⁵ In one long case, where the Court was faced with a dispute in ten tramway undertakings, no less than eight of the undertakings arranged agreements during the course of the long hearing, with the assistance of the President given in frequent interviews with the parties in chambers.⁸⁶

It must not be supposed that the desire for the assistance of the President or of the Court is confined to employees. At first there was a tendency on the part of employers, individually and in association, to resent interference, as preventing the employers from carrying on, as they said, their own business in their own way. But facts have been too strong for them. Employers now frequently request the President to intervene and to summon a conference in

⁸¹ Export Butchers, 4 Com. Arb. 82, 87 (1910); Glass Bottle Makers, 6 Com. Arb. 176 (1912); Steamboat Engine-men, 7 Com. Arb. 37 (1913); Bakers, 7 Com. Arb. 257-8 (1913).

⁸² Export Butchers, 7 Com. Arb. 52-54 (1913).

⁸³ Sec. 19 d.

⁸⁴ Engine-drivers, 6 Com. Arb. 126 (1912); Glass Bottle Makers, 6 Com. Arb. 176 (1912); 7 Com. Arb. 43 (1913); Seamen (as to manning), 7 Com. Arb. 2 (1913); Journalists, 7 Com. Arb. 112, 113 (1913); Liquor-trade, 6 Com. Arb. 129 (1912); 7 Com. Arb. 254 (1913).

⁸⁵ Sec. 24.

⁸⁶ Tramways, 6 Com. Arb. 130, 140 (1912); and see Journalists, 7 Com. Arb. 112, 113 (1913).

order to prevent a stoppage of work.⁸⁷ They seek regulation, by agreement or award, in order that they may not find their plant lying idle and their business at a standstill, and, in some cases, a season lost.

Perhaps it will be well to give a concrete case. There is, in Victoria, a great butchering trade in lambs for export, involving, I believe, more than a million pounds per annum. The lambs are sent down to Melbourne in the spring, September or October; and unless they are butchered at once they deteriorate in condition and the season is lost. The men suddenly refused to go to work at the old rates; telegrams flew up to the country settlements to stop trucking any more lambs; the settlers were faced with the prospect of losing their market, and the storekeeping and incidental industries with the prospect of grievous loss. It so happened that the same demand was made on employers in New South Wales; so that there seemed to be a two-State dispute which gave jurisdiction to the President. A conference was summoned at the request of the employers; the men induced to go to work under the conditions already in operation on a promise that the Court would arbitrate and make the award retrospective to the resumption of work, and the season was saved.⁸⁸ The parties prepared themselves peacefully to discuss their differences before the Court, but — this is the point — *the work went on*.

Another concrete case, showing the desire of both sides for definite regulation of conditions by the Court, is that of the Ship's Officers. The men, in their demands, had been too specific; the High Court had decided that the dispute must be treated as confined to the specific demands made, and that the Court of Conciliation could not prescribe a remedy for any grievance different from that remedy demanded. The Court of Conciliation found that the granting of the demands, as asked, would tend to promote strife rather than peace in the industry, and stated its difficulties to the parties. Both parties were so anxious for a definite arrangement of conditions that they consented to embody in an agreement *any*

⁸⁷ Seamen, 4 Com. Arb. 108 (1910); 5 Com. Arb. 147, 154 (1911); Fruit-growers, 5 Com. Arb. 37 (1911); Waterside Workers, 6 Com. Arb. 3 (1912); Glass Bottle Makers, 6 Com. Arb. 176 (1912); Liquor Trade, 7 Com. Arb. 254 (1913); Export Butchers, 7 Com. Arb. 52 (1913); Victorian Stevedoring Co., 5 Com. Arb. 1 (1911).

⁸⁸ Export Butchers, 7 Com. Arb. 52, 54 (1913).

terms whatever that the President thought proper, whatever the ambit of the dispute, whatever the jurisdiction of the Court. The President accordingly continued the hearing of the case and drew up an agreement which both parties signed and which they have both loyally observed.⁸⁹

There is such a strong desire for the assistance of the machinery of the Act that on several occasions an attempt has been made by employers, with or without the concurrence of employees, to induce the President to intervene in cases in which he has had to refuse his assistance, on the ground that the dispute does not extend beyond one State and must be dealt with, if at all, by State authorities.⁹⁰ Quite recently the President has had, however, to make an exception to his rule not to meddle, even by consent, with matters outside his jurisdiction. There was a dispute between labourers and artisans on the one side and the Commonwealth Government on the other, as to conditions of labour in the construction of a Naval base in Western Port, Victoria; all parties signed a submission to arbitration, leaving everything to the determination of the President as in a voluntary arbitration. In view of the serious effects of a stoppage of the works in time of war, the President consented to act, heard the parties, and gave an award, and the parties are peacefully acting in accordance with it.⁹¹

But the course of the Court, like the course of true love, does not always run smooth. It has to meet some bitter opposition. Sometimes the opposition comes from a union of employees — generally, a union which avowedly accepts the doctrine of the "class war," and aims at "the emancipation of labour by the abolition of the wage system."⁹² I have even seen a cartoon, in a labour newspaper, showing a labourer walking towards a gate marked "Freedom," and a bull-dog with a collar marked "Arbitration" bars his path. It is but fair to say that this cartoon appeared in a State which has a local arbitration court. But the attacks on the Court and its awards are, of course, generally made from the side of employers, many of whom naturally resent any curtailment of their powers. The applications for prohibition against the President have been

⁸⁹ Ship's Officers, 4 Com. Arb. 89, 91 (1910); Hairdressers, 6 Com. Arb. 1 (1912).

⁹⁰ Victorian Stevedoring Co., 5 Com. Arb. 1 (1911).

⁹¹ Naval base — not reported.

⁹² Fruit-growers, 6 Com. Arb. 61, 65, 78 (1912).

sometimes in part or temporarily successful. Prohibition is applied for because of some alleged excess of the Court's jurisdiction, and the argument generally turns on the questions, was there a dispute, and if there was, did it extend beyond one State. Sometimes the argument turns on the validity of some section of the Act. The proceedings are very long and very costly, and it is astonishing what a wealth of learning is involved in the meaning of the word "dispute" and the words "extending beyond the limit of any one State." The discussions occupy a very considerable proportion of the Commonwealth Law Reports, but they would not interest those for whose information I write this article. The legal discussions do not affect the principles or methods of action of the Court of Conciliation in cases where there is jurisdiction.

It has to be admitted that the awards, in nearly all cases, have been made in a period when the cost of living is rising and that therefore they have generally increased the existing minimum rate. The Court found, about 1911, that the cost of living was substantially increasing, but it refused to raise the basic wage until the increase could be quantitatively stated.⁹³ It suggested the expediency of official statistics on the subject, and the Commonwealth Statistician now furnishes periodically statistics which have materially assisted the Court. According to the Commonwealth Statistician, the cost of living, taking Australia as a whole, has increased by twenty-five per cent from 1901 to 1913. For such necessities as could be bought in 1901 for £1, one must now pay 25s.⁹⁴ What will happen if the cost of living should decrease — if the minimum for the basic or living wage shall have to be lowered? It is a fair question, but it is for the future to give the answer. I wish to confine my words to my personal experience. Yet there have been cases in which the Court has refused increases or has actually decreased the minimum rates, and the employees have listened to the reasons and loyally submitted. In the case of the Shearers,⁹⁵ the rates for shearing, 24s. per 100, as fixed by my predecessor, were not increased; and the strongest union in Australia, the Australian Workers' Union, acquiesced. In the same case, the Court found that too high minimum rates had

⁹³ Engine-drivers, 5 Com. Arb. 9, 14, 16 (1911).

⁹⁴ Postal Electricians, 7 Com. Arb. 5, 12 (1913).

⁹⁵ Shearers, 5 Com. Arb. 48 (1911).

previously been fixed for wool-pressers and lowered them, stating its reasons. There was no strike, no refusal to work, no expression, that I know, of discontent. In the case of the Builders' Labourers,⁹⁶ the Court fixed lower rates for Ballarat and Bendigo than for Melbourne, and lower rates for Melbourne than for Sydney, all because of differences in the cost of living. The Union leaders were troubled because these cities had always maintained the same "union rate"; but they told the members of the Union the Court's reasons, and there was peace. Again, in the same case, the Court fixed for Melbourne a lower minimum rate for scaffolders and demolishers than had been previously fixed by the wages board — $1\frac{3}{4}$ per hour instead of $1\frac{1}{4}$ per hour; and the men submitted. The truth is, I think, that if the men secure the essentials of food, shelter, clothing, etc., they are not so unreasonable as is sometimes supposed. They do not love strikes for the sake of strikes; and the great majority are generally quite willing to submit to reason if they feel that they are reasonably treated.

This article is confined, as I stated at the beginning, to the Federal Court of Conciliation and to my own actual experience in connection therewith. But American readers should know that in each of the six Australian States there is some wages board system under the State law or some industrial or arbitration Court. Victoria was the first State to adopt a system of wages boards, about 1896; and her example has been more or less followed in Queensland, South Australia and Tasmania. Western Australia has an arbitration Court, and New South Wales has a combination of the two systems, wages boards and an industrial Court. There is no organic connection between the State systems and the Federal system. The object of the wages boards is primarily to prevent sweating or under-payment; the object of the Federal Court is to preserve or restore industrial peace. The Federal Court deals with disputes, as such, and prescribes wages, etc., merely as incidental to the prevention or settlement of disputes; the wages board prescribes minimum wages and has no direct relation to disputes. But, as is obvious from the nature of the case, the systems often overlap. A wages board consists, generally, of representatives

⁹⁶ Builders' Labourers, 7 Com. Arb. 210 (1913).

selected by employers and of representatives selected by employees in equal numbers, with a neutral chairman. There is not, I think, any fixed principle stated by the legislatures for the guidance of the boards in prescribing the minimum wage. At one time, the Victorian legislature enacted that the minimum wage should not exceed the wage paid by "reputable employers;" but this negative provision has been found unsuitable, and repealed. The wages boards cannot deal with all industrial conditions; the Federal Court can deal with any industrial condition that comes into dispute. The wages boards do not publish the reasons for their determinations; the Federal Court does. As a result I find that the wages boards frequently look for guidance in their action to the reasoning of the Federal Court. The wages boards, within the limits of area assigned to them, bind all employers by their determinations; the Federal Court can only bind those who are concerned in the dispute. The wages boards, being State creations, are very much affected by the consideration of interstate competition.⁹⁷ In dealing with boot-factories, the New South Wales tribunal would have fixed the minimum for journeymen at 9s. per day, but for the fact that the rival factories of Victoria had a minimum of 8s. per day. The Federal Court when asked to intervene, was able, as an Australian tribunal, to bind the employers of both States to pay the 9s. per day.⁹⁸ Another weakness in the wages board system is that employees, in the presence of an employer or a possible employer, have not the independent position which would enable them to act fearlessly. This is especially the case where, as in the case of city tramways, there is only one undertaking where a tramway man can get employment. In the case of the Brisbane tramways it appeared that it was the manager who, as a member of the wages board, made all the proposals, and that every one of his proposals was carried unanimously.⁹⁹ Again, the decision of the wages board of one State is frequently inconsistent with the decision of the wages board of an adjoining State. There is no one final co-ordinating authority as in the case of the Federal Court, and the result is often that contrasts appear, and dissatisfaction arises, and industrial trouble. For instance, a large mining district, of essentially

⁹⁷ Engine-drivers, 5 Com. Arb. 9, 17 (1911).

⁹⁸ Boot-factories, 4 Com. Arb. 1, 8 (1910).

⁹⁹ Tramways, 6 Com. Arb. 130, 149 (1912).

the same physical and industrial character, with the same cost of living, is divided by the artificial boundary line between two States. The wages board of one State prescribed one set of wages and conditions, the wages board of the other State prescribed a lower set. The consequences were disastrous.¹⁰⁰ A New South Wales wages board gave in the case of Builders' Labourers,¹⁰¹ the lowest rate to scaffolders, and the highest to hodmen. The Victorian wages board gave the highest rate to scaffolders. The New South Wales board gave a low rate to demolishers; the Victorian board gave the highest rate. The Federal Court, when it came to act, prescribed a flat minimum rate for all the labourers, and the employees were satisfied. They knew that a man of exceptional value as a scaffold or in any other capacity would still be able to demand and obtain a rate higher than the minimum. It is often said that the minimum rate tends to become the maximum, but there has been no proof of such tendency as yet. Moreover, the wages boards are often not suitably grouped, and there is a tendency to ignore the interests of unrepresented minorities, of employers as well as of employees. For example, there was in Victoria a "Hay, chaff, wood and coal board," composed, as to employers, of ordinary wood, coal and produce retailers. They managed to get a determination which kept their own yardmen at low wages, but fixed a disproportionately large minimum for yardmen who handled coke, because the Gas Company of the city was practically the only vendor of coke and it was not represented on the board.¹⁰² But most of these defects, and other defects which I could point out, are not of the essence of the system and will probably be removed or obviated in the light of experience. Employers have assured me that they welcome the fixing of minimum rates by the boards or by the Court. They know now definitely what they must pay, and, so long as they pay it, they feel no more the incessant nagging of unions or employees as to wages. Nor can any impartial person deny the immense relief which the system of wages boards has afforded to thousands of the most helpless families throughout Australia. Wages boards constitute one of the most useful factors of those which tend, in the words of

¹⁰⁰ Engine-drivers, 7 Com. Arb. 132, 145 (1913).

¹⁰¹ Builders' Labourers, 7 Com. Arb. 210 (1913).

¹⁰² Gas Employees, 7 Com. Arb. 58, 65 (1913).

Russell Lowell, to "lift up the manhood of the poor" and to provide proper sustenance and upbringing for the children of the nation.

Perhaps I should add here that up to the present I have not been able to trace any increase of price of commodities to the fixing of minimum wages. It is not the function of the Court to ascertain the truth as to the causes of increased prices, but the Court watches for any sidelights on this important subject. In one case, I believe, a wages board raised the wages of milk carters by 1s. per day and the milk vendors at once raised the price of milk by 1d. per quart. For 100 quarts per day, this would mean an increase of receipts to the amount of 8/4 per day, so that the milk vendors had raised the price of milk far beyond the amount necessary to recoup them for the additional wages.

It will be asked, however, what is the net result of the Court of Conciliation? Have strikes ceased in Australia? The answer must be that they have not. There have been numerous strikes in Australia, as elsewhere. But since the Act came into operation there has been no strike extending "beyond the limits of any one State." Those who are old enough to recall the terrible shearers' strike and seamen's strike of the "nineties," with their attendant losses and privations, turbulence and violence, will realize how much ground has been gained. The strikes which still occur are strikes within a single State, and disputes within a single State are outside the jurisdiction of the Court. It can be safely said that, since the Act, every dispute "extending beyond the limits of any one State" comes before the Court or the President, either on the application of parties to the dispute, or on the initiative of the officers of the Court.¹⁰³ Moreover, with the exception of one doubtful case, in which I was not personally concerned and do not know the full particulars, there has been no instance of an award being flouted by the employees, no instance of the employees refusing to work under an award. There have been cases in which parties have differed in the interpretation of an award in its application to exceptional circumstances; there have been instances of inadvertent disobedience; and these cases have sometimes come to the courts in the form of an action for a penalty. But these were cases in

¹⁰³ Sec. 19.

which the award was treated as regulating the rights of the parties, not treated as a thing to be rejected.

In 1911, Parliament entrusted to the Court another formidable function, the settling of wages hours and conditions of labour for federal public servants. This function does not rest on the constitutional power to make laws for conciliation and arbitration in industrial disputes;¹⁰⁴ it rests on the absolute power of the Commonwealth in relation to its own servants. The public servants are allowed to group themselves in unions, "organizations," as they think fit, and to approach the Court with a plaint. It seems at first sight curious that Parliament should entrust any tribunal with a power of adjudicating on such subjects, but Parliament has been careful to retain the final control of the Commonwealth finances. For the award does not come into operation till the expiration of thirty days after it has been laid before both Houses, and Parliament can, if it sees fit, pass a resolution disapproving of the award. This remarkable jurisdiction over public servants deserves a study all to itself, and I can only say, though there have been several important awards under it no award has yet met with the disapprobation of Parliament and no resolution of disapproval has even been tabled.

In conclusion, I may state that I am not unaware of the far-reaching schemes, much discussed everywhere, which contemplate conditions of society in which the adjustment of labour conditions between profit-makers and wage-earners may become unnecessary. Our Australian Court has nothing to do with these schemes. It has to shape its conclusions on the solid anvil of existing industrial facts, in the fulfilment of definite official responsibilities. It has the advantage, as well as the disadvantage, of being limited in its powers and its objects. Its objective is industrial peace, as between those who do the work and those who direct it. It has no duty, it has no right, to favour or to condemn any theories of social reconstruction. It neither hinders nor helps them. But it is obvious that even if all industries were to be carried on under State direction, industrial peace would be as vitally important as it is now; and that it could not be secured without recognition of the principle which the Court has adopted, that each worker must have, at the

¹⁰⁴ Sec. 51 (XXXV).

least, his essential human needs satisfied, and that among the human needs there must be included the needs of the family. Sobriety, health, efficiency, the proper rearing of the young, morality, humanity, all depend greatly on family life, and family life cannot be maintained without suitable economic conditions. The reasoning which has lately committed to the Court the function of settling conditions of labour for public servants would not be less, would be even more applicable, if the State had more servants than it has.

Yet, though the functions of the Court are definite and limited, there is opened up for idealists a very wide horizon, with, perhaps, something of the glow of a sunrise. Men accept the doom, the blessing of work; they do not dispute the necessity of the struggle with Nature for existence. They are willing enough to work, but even good work does not necessarily ensure a proper human subsistence, and when they protest against this condition of things they are told that their aims are too "materialistic." Give them relief from their materialistic anxiety; give them reasonable certainty that their essential material needs will be met by honest work, and you release infinite stores of human energy for higher efforts, for nobler ideals, when

"Body gets its sop, and holds its noise, and leaves soul free a little."

Henry Bourne Higgins.

HIGH COURT OF AUSTRALIA, MELBOURNE.